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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
09/674,996	11/02/2000	William Edward James	25529-02	1327
7590	10/04/2004			
William E James				
245 Congaree Rd #604				
Greenville, SC 29607				
EXAMINER				
NGUYEN, TAM M				
ART UNIT				
PAPER NUMBER				

3764

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/674,996	Applicant(s) JAMES, WILLIAM EDWARD	
	Examiner Tam Nguyen	Art Unit 3764	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 22,23,26,27,36-38 and 40.

Claim(s) withdrawn from consideration: 1-21,24,25,28-35 and 39.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Response to Arguments

1. See 37 CFR 1.193(a)(2) which provides for the inclusion of the proposed rejection(s) detailed below in the Examiner's Answer if applicant elects to file an appeal to the Board of Patent Appeals and Interferences in this proceeding. To be complete, such rejection(s) must be addressed in any brief on appeal.

Upon appeal and entry of the amendment:

Claims 22, 23, 26, 27, 36-38 and 40 would be rejected for the reasons set forth in Paragraphs 3-7 of the final Office Action mailed December 1, 2003.

2. Applicant's arguments filed May 4, 2004 have been fully considered but they are not persuasive. Applicant argues that the Rawls et al reference has the following limitations: 1) no realistic, normal walking, or running strides 2) the rearward strides from a constant forward step-down position are not automatically variable and 3) the return of each pedal to said forward step-down position at end of stride is not independent of the stride length. First the Rawls reference provides for a "natural feeling exercise allowing the user to use his natural stride length and height." (see Col. 15, lines 54+ and Col. 4, lines 56-66). Second the Rawls reference discloses an apparatus that allows for automatically variable strides (see Col. 4, lines 62 – Col. 5, line 6, Col. 5, lines 21-27). Finally, Rawls discloses that the return of each pedal is independent of the stride length. When one pedal is pushed down and back, the other pedal is returned to the front regardless of the length of the previous stride (see Col. 5, lines 26-34, Col. 10, lines 13-15 and Col. 15, lines 51-54). That is, Rawls includes a

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mechanism wherein the first movement of one foot pedal down and back may automatically cause the other pedal to move to the front (the second movement), but this cause and effect relationship is not affected by the length of the first movement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 703-305-0784. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 21, 2004



NICHOLAS D. LUCCHESI
SUPERVISORY EXAMINER
TECHNOLOGY CENTER